

STATE OF NEW YORK

194--A

Cal. No. 149

2017-2018 Regular Sessions

IN SENATE

(Prefiled)

January 4, 2017

Introduced by Sens. MARCHIONE, DeFRANCISCO, MURPHY, SEWARD -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations -- recommitted to the Committee on Investigations and Government Operations in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the legislative law and the state administrative procedure act, in relation to requiring documentation establishing statutory authority prior to the adoption of a rule

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 87 of the legislative law, as added by chapter 689
2 of the laws of 1978, is amended to read as follows:
3 § 87. Powers and duties. 1. The commission shall exercise continuous
4 oversight of the process of rule making and examine rules, as defined in
5 subdivision two of section one hundred two of the state administrative
6 procedure act, adopted or proposed by each agency with respect to (i)
7 statutory authority, (ii) compliance with legislative intent, (iii)
8 impact on the economy and on the government operations of the state and
9 its local governments, and (iv) impact on affected parties; and, in
10 furtherance of such duties, may examine other issues it deems appropri-
11 ate. For purpose of this article, the term agency shall mean any depart-
12 ment, board, bureau, commission, division, office, council, committee or
13 officer of the state or a public benefit corporation or public authority
14 at least one of whose members is appointed by the governor.
15 2. The commission may employ such staff and retain such consultants
16 and expert services as may be necessary and fix their compensation and
17 expenses within the amounts appropriated therefor. Employment by the

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 commission shall be deemed to be employment by the legislature for all
2 purposes.

3 3. Proposed rules and accompanying documentation establishing the
4 statutory authority for agency promulgation, shall be provided to the
5 commission at the beginning of the public comment period required by
6 subdivision one of section two hundred two of the state administrative
7 procedure act. The commission or members of the commission may review
8 such information and determine whether such rules are consistent with
9 constitutional and statutory authority. Any determinations made by the
10 commission or a chairperson of the commission shall be made available on
11 the commission's website and provided to the respective state agency.

12 4. The commission shall have the power, subject to the provisions of
13 section seventy-three of the civil rights law, to hold hearings, subpoena
14 witnesses, administer oaths, take testimony and compel the production
15 of books, papers, documents and other evidence in furtherance of its
16 duties; provided, however, that no subpoena shall issue except upon the
17 affirmative vote of a majority of the whole membership of the commis-
18 sion. The commission may request and shall receive from all agencies
19 such assistance and data as will enable it properly to consummate any
20 such examination, and review.

21 5. The commission shall have standing to pursue an action pursuant to
22 article seventy-eight of the civil practice law and rules against an
23 executive agency if the commission determines that a rule exceeds
24 authority provided under state law or the state constitution. Actions
25 shall be commenced in this way upon affirmative vote of a majority of
26 the whole membership of the commission. In the event that the speaker of
27 the assembly and the temporary president of the senate are members of
28 the same political party, the commencement of an action would require an
29 affirmative vote of more than two-thirds of the whole membership of the
30 commission.

31 § 2. Section 88 of the legislative law, as amended by chapter 850 of
32 the laws of 1990, is amended to read as follows:

33 § 88. Reports. 1. The commission shall, from time to time, report its
34 findings and recommendations to the governor, the temporary president of
35 the senate and the speaker of the assembly, and to the members of the
36 legislature, and may at any time make recommendations to an agency based
37 upon its review of that agency's rule making process, or any of the
38 agency's proposed, revised or adopted rules.

39 2. The commission may publish its findings and recommendations with
40 regard to a regulation or rule on its website, or any other form it
41 deems appropriate.

42 § 3. The opening paragraph of paragraph (a) of subdivision 1 of
43 section 202 of the state administrative procedure act, as amended by
44 chapter 455 of the laws of 2017, is amended to read as follows:

45 Prior to the adoption of a rule, an agency shall submit a notice of
46 proposed rule making to the secretary of state for publication in the
47 state register, shall provide the proposed rules and accompanying
48 documentation establishing the statutory authority for promulgation to
49 the administrative regulations review commission, and shall afford the
50 public an opportunity to submit comments on the proposed rule. Unless a
51 different time is specified by statute, the notice of proposed rule
52 making must appear in the state register at least sixty days prior to
53 either:

54 § 4. This act shall take effect immediately.